

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4728 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HINDUJA MANISH LAXMICHAND

Versus

PRINCIPAL M K SECONDARY AND HIGHER SECONDARY SCHOOL

Appearance:

MR MN MEHTA for Petitioner

MR SI NANAVATI for Respondent No. 1

MR PK SHUKLA, AGP, for Respondent No. 3, 4, 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/09/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, a student of respondent no.1-school has

challenged his non admission to the 11th Standard in the same school as arbitrary and illegal.

2 The petitioner in this petition under Article 226 of the Constitution passed his 10th Standard (S.S.C.) Examination, conducted by the Gujarat Secondary Education Board in March 1998, the results whereof were declared in June 1999. The petitioner was a student of M.K. Secondary and Higher Secondary School, Ahmedabad respondent no.1 - school which is run by respondent no.2 - institution (hereinafter referred to as the respondent-school). The petitioner obtained 55.43% marks in the aforesaid examination and in June 1999 applied for admission to the 11th Standard (General Stream - Commerce Section) in the same school. However, the petitioner was denied the admission on the ground that only 80% of the seats in 11th Standard (General Stream - Commerce Section) were to be filled in by the students who had passed the 10th standard examination from the said school and 20% of the seats were required to be filled in from the students who are seeking admission from the other schools and that the students admitted in the 11th Standard (General Stream - Commerce Section) were more meritorious than the petitioner. The petitioner thereupon approached the District Education Officer who, by his letter dated 16.6.1999 (Annexure-E) instructed the respondent - school to admit the petitioner to the 11th Standard (General Stream). However, the respondent school showed its inability to carry out the instructions contained in the said letter on the ground that the petitioner could be given admission to the 11th Standard (General Stream - Arts Section) but not in the Commerce Section. The petitioner was, however, desirous of prosecuting his studies in commerce section and, therefore, made a representation to the Joint Director of Education on 18.6.1999 (Annexure-F). The Joint Director of Education by his letter dated (Annexure-G) granted special permission for having one more student over and above the 66 students already admitted to the 11th standard (general stream). However, the respondent school still pleaded its inability to admit the petitioner. Hence, the petitioner filed the present petition on 5.7.1999 contending that the petitioner having passed the 10th standard from the same school the respondent - school could not have denied the admission to the petitioner in general stream (commerce section).

3 In response to the notice issued by this Court, the Principal of the respondent - school has filed affidavit-in-reply pointing out that the respondent-school was merely complying with the

directions of the State Government which had issued a Circular dated 3.6.1999 in respect of XI standard (Science Stream) laying down that 80% of the seats be filled in from amongst the students who had passed their examination from the same school and the remaining 20% from amongst the students who had passed the 10th Std. examination from other schools. It is submitted that respondent - school has followed the said criteria and that in each category admissions are granted only on the basis of merits and that no student having obtained less marks than the petitioner is admitted to the 11th standard (Science Stream) or General Stream (Commerce Section). It is further submitted that there are 16 more students who are more meritorious than the petitioner and that if the petition is allowed, all such students may come forward and stake their claim for admission to the respondent-school.

4 At the hearing of this petition, Mr Mehta, learned counsel for the petitioner, has placed strong reliance on the decision dated 24.8.1999 in Special Civil Application No.4183 of 1999 wherein this Court followed the decision of the Apex Court in the case of THE PRINCIPAL, CAMBRIDGE SCHOOL & ANR. V. Ms PAYAL GUPTA IN AIR 1996 SC 118 and held that students who pass their 10th standard examination from a particular school are entitled to get admission to the 11th standard in the same school according to their merit and in preference to the candidates coming from other schools and that it is after accommodating all the students who have applied for the 11th standard from the very school, if more seats remain available, only then such seats are to be given to the students coming from other schools. It is submitted that if this principle is directed to be followed by the respondent-school also, the petitioner will get admission to the 11th standard (General Stream Commerce Section) on his own merits and that by denying the admission to the petitioner and by not following the aforesaid principle by respondent-school has done gross injustice and illegality to the petitioner and, therefore, reliefs as prayed for deserve to be granted.

5 On the other hand, Mr S.I.Nanavati, appearing for respondent-school and as also party in person has vehemently opposed the petition and has submitted that the admissions are already closed and even first term examination is going to be held next week and therefore, it is too late in the day to grant any relief in favour of the petitioner. It is further submitted that the decision dated 24.8.1999 of this Court in SCA No.4183 of 1999 was in respect of admission to the 11th standard in

Science Stream and, therefore, the same may not ipso facto apply to the admissions to the 11th standard General Stream. It is submitted that admissions were given in June/July 1999 on the basis of the Government Circular for admissions to the 11th standard in Science Stream and that the said Circular was challenged before this Court, but it was upheld by a Division Bench of this Court in AIR 1985 GUJ. 146. The said Resolution dated 23.4.1986 required the schools to reserve 80% seats in Standards 11 and 12 to their own students on the basis of merit and to reserve 20% seats for outside students i.e. students who had passed 10th examination from other schools, on the basis of merits. It is, therefore, submitted that since outside students have already been admitted on the basis of the aforesaid circular by following the principles contained in the aforesaid Circular and they have already started prosecuting their studies, applying the principle laid down in the aforesaid decision dated 24.8.1999 would mean disturbing the admissions granted to students from other schools, which would cause grave prejudice and injustice to such outside students. It is further submitted that if the petitioner is required to be admitted to the 11th standard in respondent no.1-school, at this stage there may be difficulties, if not complications, about the deficit in the petitioner's attendance.

6. Having heard the learned counsel for the parties, it appears to the Court that the petitioner's case is clearly covered by the decision dated 24.8.1999 of this Court in Special Civil Application No.4183 of 1999 which was rendered on the basis of the decision of the Apex Court in the case of Payal Gupta (supra). There is no dispute about the fact that the petitioner has passed the 10th examination from the respondent-school. However, Mr Nanavati for the respondent - school would submit that all that the judgement of the learned single Judge and even the judgement of the Apex Court lay down is that the student passing out the 10th standard examination from a particular school is entitled to get admission to the 11th standard but that would not necessarily mean that student has a right to get admission to a particular stream irrespective of merits. The contention is certainly prima facie valid because it would depend on the strength of the seats in each stream. If a particular school has infrastructure facilities like laboratory for only 60 students and therefore, the sanctioned strength of science stream in the 11th standard is only 60, then only 60 students passing from the same school would be entitled to be considered for admission to those 60 seats on the basis of their merits

at the 10th standard examination and if more students from the same school but less meritorious seek admission in science stream, the school might have to decline admission on the ground that the sanctioned strength is exhausted. However, there is also no dispute about the fact that if all 100% seats in the 11th standard (General Stream-Commerce Section) in the respondent-school were to be filled in from amongst the students who had passed the 10th examination from the same school, the petitioner would have secured admission to the 11th standard (General Stream-Commerce Section) on his own merits. Hence, the petitioner is entitled to be admitted to the 11th Standard (General Stream - Science Section) in the respondent-school.

7. It may be that there were more meritorious students, but none of them have approached this Court for the last two months. It is, therefore, safe to proceed on the basis that they are not aggrieved by the decision of the respondent-school in not giving them admission to the 11th standard (General Stream Commerce Section).

8. As regards the contention that there would be deficit in attendance, such a situation was also contemplated by this Court while allowing Special Civil Application No.4183 of 1999 and it was specifically directed that when the petitioner is to be considered on the basis of his preferential right for admission to a particular stream of the 11th standard, his admission and prospect of studying the course shall not be made to suffer either in the matter of attendance or otherwise because of late admission now after passing of this order. The present petitioner had earlier approached the District Education Officer and Joint Director of Higher Education and immediately thereafter on 5.7.1999 approached this Court. Hence, time taken by this Court in adjudicating the dispute cannot be allowed to prejudice the petitioner.

9. In the result, this petition deserves to be allowed. Respondents nos.1 and 2 are required to be directed to consider the petitioner's case for admission to the 11th standard (General Stream-Commerce Section) on the basis of the principle laid down by this Court in Special Civil Application No.4183 of 1999 and on the basis that the petitioner would have been admitted to the said course if all the 100% seats are reserved for the students passing their 10th standard examination from the respondent-school. Since the petitioner had approached this Court as early as on 5.7.1999 and it is the case of the petitioner that he did not get admission in any other

course, it would be just and proper to direct the respondents to give admission to the petitioner in the aforesaid course even at this stage.

10. It is accordingly directed as under:-

"Respondents Nos.1 and 2 shall admit the petitioner to the 11th standard (General Stream Commerce Section) for the Academic Year 1999-2000. In order to see that rights and interests of the outside students who are already admitted are not jeopardised, the respondents are directed to take appropriate measure by creating an additional seat. (There can not be any difficulty on this score in view of the instructions which were already given by the DEO on 16.6.1999 and the Joint Director of Education on 18.6.1999.)

It is further directed that on the petitioner's admission to respondent no.1-school as aforesaid, the prospects of studying in the course shall not be prejudiced either in the matter of attendance or otherwise because of late admission now merely because this petition was pending before this Court for the last two months.

Rule is accordingly made absolute. There shall be no order as to costs.

09.09.1999 (M.S. SHAH, J.)
(mohd)